

Opening Statement - Joseph Gibson

Mr. Chairman, Members of the Committee, Ladies and Gentlemen:

Good morning. My name is Joseph Gibson, and I am an attorney in private practice in Houston, Texas. I was previously employed at the law firm of O'Quinn, Laminack & Pirtle, one of the law firms in the silicosis litigation that is subject of the hearings today.

I appreciate the opportunity to appear before the Committee today to address, as best I can, questions surrounding the silicosis litigation, including my involvement and that of my former employer.

First, I'd like to say that silicosis is a real and terrible disease. Litigation related to silicosis is not new; it's been around since the mid-1980s in Texas. This litigation has resulted in millions of dollars being paid in settlement to people suffering from silicosis, many of whom are very sick.

There are a number of other people who suffer from this disease as a result of overexposure to silica on their jobs and who deserve compensation. Dr. Laura Welch, one of the initial witnesses before this Subcommittee, pointed out that silicosis is a real public health problem and there may be thousands of new cases of silicosis that appear each year even without active screening.

I am 35 years old. I graduated from law school in 1998. I spent a year at another law firm in Houston and then joined the firm of O'Quinn, Laminack & Pirtle (the "O'Quinn firm"). I was hired as a staff attorney and subsequently became an associate at the firm. I was never a partner. My compensation was not tied to the money that was made on the cases I handled.

As a young lawyer with the O'Quinn firm, I was assigned to work on the silicosis cases being handled by the firm. I was pleased to represent people I thought deserved help. I had no interest in manufacturing claims for undeserving persons.

I reported to two of the partners in the firm, Rick Laminack and Tom Pirtle. The two of them, primarily Mr. Laminack, were in charge of everything I worked on, including the firm's silicosis docket. My role was to assist them and manage the cases on a day-to-day basis. This was entirely appropriate given my status as a

junior attorney in the firm. At the time I was working at the O'Quinn firm, I had no trial experience of my own.

My responsibilities included getting silicosis cases set for trial, getting case management orders in place, drafting and sending discovery requests, gathering documents and preparing outlines and exhibits for depositions of defense witnesses and taking some depositions. I primarily took secondary depositions and helped prepare Tom Pirtle for primary depositions, such as corporate representatives. I also negotiated settlements in some of the cases.

Part of my duties included coordinating communications among the principal law firms involved in the silicosis litigation and between those firms and the multi-district litigation ("MDL") court, hence my title as "lead counsel" for the plaintiffs' firms. These communications were primarily administrative and logistical in nature. While I was pleased to be assigned this responsibility and to play this role, my title certainly did not signify that I was in charge of the plaintiffs' side of the litigation. Each of the principal plaintiffs' firms was responsible for the prosecution of its claims.

An issue has arisen about competence and/or integrity of the diagnoses made by certain of the doctors whom the plaintiffs' firms employed in the cases that were part of the MDL litigation before Judge Jack. Some of these doctors, such as Dr. George Martindale, were never employed by the O'Quinn firm.

The O'Quinn firm used several different doctors in connection with its cases. The work of some of them was not questioned by Judge Jack. Substantial questions were raised by Judge Jack about the work of one doctor, Dr. Ray Harron, who read the x-rays and/or made diagnoses in many of the cases handled not only by the O'Quinn firm but also by other plaintiffs' law firms both inside and outside of the MDL.

I was not involved in the original selection of Dr. Harron and, so far as I know, neither was anyone else at the O'Quinn firm. Instead, we inherited Dr. Harron with a number of the cases that were referred to the firm. Evidently, Dr. Harron was brought into the cases through a screening company, N & M, Inc., that was employed by the referring law firm. Dr. Harron had the requisite credentials to perform the x-ray diagnostic work – he had been a certified B-reader for many years. I met him on a number of occasions and he appeared to me to be competent at his work. He also had a great deal of litigation experience and had testified on a number of occasions, which also appeared to be an asset.

Shortly before the February 2005 court hearing before Judge Jack, I learned that Dr. Harron had been engaged by another firm to review over 4,000 of the x-rays from its previous asbestosis cases and had diagnosed the presence of silicosis as well. This caused me significant concern and I promptly reported this development to Rick Laminack. He directed me to bring in Dr. Harron for a face-to-face meeting. I did so and Mr. Laminack spoke to Dr. Harron at some length. Dr. Harron assured us that he stood by the results of all his work. At the end of the meeting, Mr. Laminack decided that he was satisfied with Dr. Harron's answers and that we should go forward with him.

I was very surprised and upset by Dr. Harron's testimony at the hearing, where it developed that his very large number of dual diagnoses of asbestosis and silicosis in the same individuals was highly questionable and gave the appearance that his diagnoses changed to suit the convenience of the case. This testimony made me wish that we had dug deeper and discovered these problems before the hearing. We would never have knowingly trusted the fate of our clients and our cases to what now appear to be unreliable diagnoses.

Finally, I note that many of the silicosis cases before Judge Jack came from Mississippi and were remanded by her to the Mississippi state courts. After being remanded, 12 of the 73 defendants sought to have sanctions imposed on the O'Quinn firm for having filed these cases in the first place. The Mississippi court refused to impose sanctions. It found that the O'Quinn firm had relied in good faith on accepted patient screening practices for mass tort cases to locate potential plaintiffs and develop the silicosis litigation.

At this point, I am prepared to answer, to the best of my ability, any questions the Subcommittee may have.